



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

April 7, 2014

BY ELECTRONIC MAIL & U.S. MAIL

William H. Hyatt, Jr., Esq.
K&L Gates LLP
One Newark Center, Tenth Floor
Newark, NJ 07102-5285

Re: Diamond Alkali Site - Lower Passaic River Modeling Collaboration Meetings
Lower Passaic River Study Area Administrative Settlement Agreement and Order on
Consent for Remedial Investigation/Feasibility Study (RI/FS), CERCLA Docket No. 02-
2007-2009

Dear Bill:

This will respond to your letter dated April 1, 2014, about the modeling meetings that U.S. Environmental Protection Agency ("EPA") and the Cooperating Parties Group ("CPG") have agreed to hold during 2014. Your letter explains that the CPG objects to EPA's intention to share information with Occidental Chemical Corporation ("Occidental") and that unless Occidental meets certain conditions relating to the dispute between the CPG and Occidental, the CPG will not participate in these meetings if any representative of Occidental is present.

Your April 1, 2014 letter makes the point that the meeting on March 13, 2014, and the meeting that was planned for April 10, 2014, were intended for EPA to provide oversight of the CPG's development of the model. We agree, and did not mean to suggest otherwise by referring to the meetings as collaboration meetings. The meetings are intended to benefit both the CPG and EPA by allowing communication about the modeling while the work is in progress, thus making for more efficient oversight. The CPG's refusal to provide the presentation and meeting notes from the March 13, 2014 meeting, or to participate in further meetings, is counterproductive, given the goal of completing the remedial investigation and feasibility study ("RI/FS") for the 17-mile Lower Passaic River Study Area ("LPRSA") by the end of 2014.

As previously stated, Occidental is responsible for the Newark Bay RI/FS. To complete the work required under the Newark Bay administrative order on consent ("AOC"), Occidental will need to understand the Lower Passaic River/Newark Bay model developed by the CPG, so that it can evaluate remedial alternatives for Newark Bay. This will be true regardless of which parties actually run the model. The dispute between the CPG and Occidental does not alter this fact. We understand that the CPG is aggrieved that Occidental's representative Tierra Solutions, Inc. ("Tierra") has not reimbursed the CPG for the cost of certain data collected in Newark Bay by the CPG's contractor, which, according to the terms of the Newark Bay AOC, was to have been

collected by Occidental. However, the arrangement for the CPG's contractor to collect the data, and for Tierra to reimburse the CPG, was made between representatives of the CPG and Occidental and Tierra. EPA was not party to that arrangement. Further, it is beyond EPA's ability to resolve the dispute between the CPG and Occidental, as well as Maxus Energy Corp. and Tierra Solutions, Inc., pertaining to River Mile 10.9 and to the departure of Occidental, Maxus and Tierra from the CPG. None of this relieves Occidental of the responsibility for completing the Newark Bay RI/FS.

Your letter states that "forcing" the CPG to provide access to work product is inequitable. EPA finds this term to be inapposite. The fact is that documents, reports or other information created or generated by the CPG pursuant to the LPRSA AOC (or by Occidental, pursuant to the Newark Bay AOC) and submitted to EPA are not inherently privileged. Under the AOC, such information cannot be withheld from EPA on this basis, and once EPA is in receipt of such documents, EPA could not withhold it from the public -- or Occidental -- unless an exemption applied under the Freedom of Information Act.

Moreover, as noted in CPG Project Coordinator Robert Law's letter dated November 22, 2013, the CPG has been sharing its preliminary results with the Region, Headquarters, and the CAG, consistent with EPA's own approach of sharing information. Until now, the CPG has not given any indication that it viewed the development of the Lower Passaic River/Newark Bay model to be a process that must be protected from the public's view. Indeed, as you stated in your December 20, 2013 letter: "all information that the CPG has collected and provided to EPA is, and has been, publicly available."

Your April 1, 2014 letter requests that the CPG be invited to meetings between EPA and Occidental relating to the Newark Bay study, and be provided with notes from such meetings. Whereas the CPG has actively pursued a more informal approach to oversight, including by requesting the series of meetings on the FS that began in February 2014, Occidental has not. EPA's exchanges with Occidental are in writing. (EPA's correspondence with Occidental, through Tierra, is available upon request, just as correspondence between EPA and the CPG is available.) Further, in your letter dated December 20, 2013, you note that the CPG has taken advantage of the opportunity to download Occidental's submissions from Sharepoint, remaining informed about the progress of the Newark Bay RI/FS. In contrast, the request that information about the modeling meetings between EPA and the CPG not be made available might lead to an appearance that the EPA and CPG are making it more difficult for others to be informed about the progress of the LPRSA RI/FS than about the Newark Bay RI/FS. While EPA does not think that this is the CPG's intention, we must be careful not to create the appearance that EPA's oversight of the LPRSA RI/FS involves the exchange of confidential information with the CPG.

If the CPG prefers to discontinue meeting with EPA, rather than face the possibility that Occidental be allowed to attend in order to remain informed about the Lower Passaic River/Newark Bay model, EPA will not insist that the meetings continue. However, we respectfully urge that the CPG reconsider this position, as we think this is likely to make for a less efficient oversight process.

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Until such time as the meetings resume, EPA will continue to oversee the model development and implementation, and the RI/FS, as we have been doing, and sharing information as we deem appropriate for both the LPRSA RI/FS, and the Newark Bay RI/FS.

Sincerely yours,

A handwritten signature in cursive script, reading "Sarah P. Flanagan".

Sarah P. Flanagan
Assistant Regional Counsel

cc: K. Mack, K&L Gates, LLP
R. Basso, ERRD
J. LaPoma, ERRD
E. Naranjo, ERRD
P. Hick, ORC